

Montana Senate Bill 367 Language as of 2/24/11

Section 3. Section 75-5-313, MCA, is amended to read:

"75-5-313. ~~Temporary nutrient criteria~~ Nutrient standards variances -- individual, general, and alternative. (1) The department ~~may~~ shall, on a case-by-case basis, approve the use of ~~temporary nutrient criteria~~ an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, ~~or the limits of technology, or both~~.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts, ~~and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards~~.

~~(b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.~~

~~(c)~~(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards ~~or criteria~~ to the board and shall continue to consult with the nutrient work group in implementing ~~temporary nutrient criteria~~ individual nutrient standards variances.

(3) The department shall review each application for ~~temporary nutrient criteria~~ an individual nutrient standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading, ~~or permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11),~~ that preclude the need for the ~~temporary criteria~~ individual nutrient standards variance.

(4) ~~(a)~~ Temporary nutrient criteria Individual nutrient standards variances approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

~~(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.~~

(5) (a) Because the treatment of wastewater to nutrient levels more stringent than those provided in subsection (5)(b) would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) A THE DEPARTMENT SHALL APPROVE THE USE OF A general nutrient standards variance is available to FOR permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on [the effective date of this act].

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

~~(e)~~(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, ~~temporary nutrient criteria~~ the nutrient standards variances, and implementation of those ~~criteria standards and variances~~, including estimated economic impacts.

~~(d)~~(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection ~~(4)(e)~~ (12) to the environmental quality council in accordance with 5-11-210."